Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1517

RAYMOND T. KWIEK,

Petitioner,

vs.

THE BOARD OF FIRE AND POLICE COMMISSIONERS OF THE VILLAGE OF SCHAUMBURG, MARTIN J. CONIGLIO, Chairman of the Board of Fire and Police Commissioners of the Village of Schaumburg, FRED W. VOLKENING, Member, Board of Fire and Police Commissioners of the Village of Schaumburg, DONALD I. PETERSON, Member, Board of Fire and Police Commissioners of the Village of Schaumburg, and MARTIN J. CONROY, Chief of Police of the Village of Schaumburg,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE ILLINOIS APPELLATE COURT, FIRST DISTRICT

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Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE ILLINOIS APPELLATE COURT, FIRST DISTRICT

The Petitioner, Raymond Kwiek, respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the Illinois Appellate Court, First District.

OPINION BELOW

The opinion of the Illinois Appellate Court, First District, which is unreported, appears as Appendix A hereto.

JURISDICTION

The judgment of the Illinois Appellate Court, First District, was entered on September 23, 1975. A timely filed Petition for Leave to Appeal to the Illinois Supreme Court was denied on January 23, 1976. This petition for Certiorari is filed within ninety days of that date. This Court's jurisdiction is invoked under 28 U.S.C. § 1257(3).

QUESTIONS PRESENTED

1. Whether Petitioner was denied his Fourteenth Amendment right to due process where the trial and appellate courts refused to consider his challenge to the constitutional validity of the Village of Schaumburg's Board of Fire and Police Commissioners' Rules 20, 22 and 38.
2. Whether the Village of Schaumburg Board of Fire and Police Commissioners' Rules 20, 22 and 38, which limit a police officer's right to criticize superiors, violate the First and Fourteenth Amendments.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The United States Constitution, Amendments One and Fourteen, and Village of Schaumburg Board of Fire and Police Commissioners' Rules 20, 22 and 38 are involved herein and are set forth in Appendix B.

STATEMENT OF THE CASE

Petitioner, Raymond T. Kwiek, had been a police officer with the Village of Schaumburg, Illinois, since 1968. On February 1, 1972, the Chief of the Schaumburg Police Department, Martin J. Conroy, sent Kwiek, by letter, a suspension order stating that the following charges, *inter alia*, were being filed against Petitioner with the Board of Fire and Police Commissioners of the Village of Schaumburg ("Board"):

> 1. Paragraph 20 of the Schaumburg Police Department Rules and Regulations referenced to insubordination whereby false information was given to the Chief of Police in various areas of the Greenfield case in criticism regarding the Greco case which involved the Greenfield letters and the Heidt case;
>
> 2. Paragraph 22 of the Schaumburg Police Department Rules and Regulations whereby superiors were criticized in the handling of various criminal cases and other cases within the Schaumburg Police Department;
>
> 3. Paragraph 38 of the Schaumburg Police Department Rules and Regulations referenced confidential information whereby confidential information was released on a pending court matter.

On March 16, 1972, a hearing on the above related charges was held by the Board. At the hearing the following facts were developed:

Chief Conroy explained the various charges that had been filed against the Petitioner. Chief Conroy further explained to the Board what the "Heidt case", the "Greco affair", and the "Greenfield letter" involved. The "Heidt case" was a criminal case involving an alleged

theft from a Sears Roebuck store by one of Schaumburg's police officers. The "Greco affair" concerned a truck that had been stopped by members of the Schaumburg Police Department for possible overwidth violations. A fracas ensued between the officers and the truckers. After the truckers were arrested, the owner of the Greco Company arrived at the station, and had a conference with Chief Conroy, the police officers and the truckers. Afterwards the Chief ordered that no charges be placed. The "Greenfield letter" involved various inflammatory letters which were sent to the Mayor of Schaumburg and various newspapers criticizing the Chief of Police, Conroy, for his handling of the Greco matter. Conroy further testified as to the basis for the various charges filed against Petitioner and related a number of statements which other officers had told him that Petitioner had made.

Conroy also testified that he had placed an officer, Tom Sultzer, on "special assignment". Conroy described the special assignment as being one in which the officer was allegedly fired from his position and then told to go and mingle with other officers and discuss their feelings regarding Conroy and try to determine who had instigated the "Greenfield letters" matter. Some of the charges which Conroy filed against Kwiek resulted from various statements made to this "officer on special assignment" by Petitioner.

Further evidence resulted from conversations overheard by two police officers, William Bartkvich and Detective Barabas, while hiding in an attic of the house of the police officer on special assignment. They overheard Petitioner's discussions regarding Chief Conroy with the special agent and the special agent's father. Furthermore, the evidence revealed that all of the comments made by Petitioner were done in private, were

not publicly disseminated and, for the most part, were made while Petitioner was off duty.

Petitioner testified on his own behalf that he had been a Village of Schaumburg policeman for four years. He had been suspended for one day on each of two prior occasions for failing to appear in court. These were the only negative aspects of an otherwise good record. Petitioner admitted criticizing Chief Conroy and other police department officials in private conversations with Tom Sultzer and noted that Sultzer and other police officers had criticized the Chief of Police.

After the hearing, the Board issued written findings on April 17, 1972. The Board determined that Petitioner should be discharged and removed from his position as a patrolman with the Schaumburg Police Department. In support thereof it made various findings of fact and law. With regard to the specific facts of the case, the Board made the following findings:

> 7. Respondent, as charged herein, and contrary to the Rules and Regulations of the Police Department of the Village of Schaumburg, was guilty of insubordination, contrary to Paragraph 20 of Section 1 of said Rules and Regulations, in that: A) he did on numerous occasions, including October 10, 1971, October 28, 1971, and December 18, 1971, make critical and derogatory statements about the Chief of Police of the Village of Schaumburg which statements were made to other members of the Police Department of the Village of Schaumburg, and thereby impugned the character of said Police Chief; B) he refused to give information requested of him by superior officers relative to a pending criminal matter involving one William Heidt, when such information was within the knowledge of Respondent; C) he refused to recognize his obligation to give such information, claiming that he was excused because such information was obtained

while he was off duty and not assigned to the case; and D) he demonstrated divided loyalty as between his duties as a police officer and to said William Heidt.

8. Respondent, as charged herein, and contrary to the Rules and Regulations of the Police Department of the Village of Schaumburg, Illinois, including Paragraph 22, Section 1, of said Rules and Regulations, was guilty of: A) criticizing members of the Police Department of the Village of Schaumburg, Illinois, namely, Police Chief Martin J. Conroy, Sgt. James J. Dillon, and Sgt. Daniel M. Coursey, as to their background, character and conduct in general to such an extent as to bring the character of such members of the department into disrepute and to thereby bring the Police Department into disrespect and disrepute; and B) as to Police Chief Martin J. Conroy and Sgt. Daniel M. Coursey specifically with respect to their official actions in connection with the incident known as the "Greco matter", to such an extent as to bring the character of such members of the department into disrepute and to thereby bring the Police Department into disrespect and disrepute; and C) he did on numerous occasions, including on October 10, 1971, October 28, 1971, and December 18, 1971, make critical and derogatory statements about Police Chief Martin J. Conroy, which statements were made to other members of the Police Department of the Village of Schaumburg, and thereby impugned the character of said Police Chief and brought the Department into disrespect and disrepute.

9. Respondent, as charged herein, and contrary to the Rules and Regulations of the Police Department of the Village of Schaumburg, Illinois, including Paragraph 38, Section 1, of said Rules and Regulations, was guilty of releasing information covering the affairs, business or operation of the said Police Department without the consent of the Commanding Officer, in that during the pendency

of the criminal case against said William Heidt, Respondent did voluntarily telephone the attorney for said William Heidt and informed him that he had given a statement to the Police Chief relating to his knowledge of the Heidt matter, all without the consent, knowledge or authorization by the Commanding Officer of the Chief of Police.

A request for rehearing was made and subsequently denied by the Board on May 20, 1972. On June 13, 1972, Petitioner filed a complaint for administrative review in the Circuit Court of Cook County, Illinois. Said complaint for review challenged the constitutionality of various sections of the Schaumburg Police Department Rules and Regulations and also challenged the findings of the Board. On November 13, 1972, after reviewing the record before the administrative board, briefs of counsel and argument, but without taking testimony, Judge Robert Downing entered an order affirming the findings and decision of the Board. In his order, Judge Downing stated that, "without passing on the constitutionality of paragraph 22 of the Rules and Regulations", (he) found and decreed that there was sufficient evidence to support the findings of the Board and that the findings and conclusions of the Board were not against the manifest weight of the evidence. This order was the sole finding of the Court. Petitioner filed a timely Notice of Appeal, and prosecuted it in the Appellate Court. On September 23, 1975, the Appellate Court affirmed Judge Downing (a copy of the order of the Appellate Court appears as Appendix A to this Petition).

The Appellate Court, in its opinion, did not discuss the constitutionality of Rule 22 of the Board's Rules and Regulations. In his Petition for Leave to Appeal to the Illinois Supreme Court, Petitioner challenged the constitutionality of paragraphs 20, 22 and 38 of the Board's Rules. That Petition was denied on January 23, 1976, without opinion, and this petition follows.

REASONS FOR GRANTING THE WRIT

I.

THE TRIAL AND APPELLATE COURTS DENIED PETITIONER HIS FOURTEENTH AMENDMENT RIGHT TO DUE PROCESS BY FAILING TO CONSIDER THE CONSTITUTIONAL CHALLENGE MADE BY PLAINTIFF TO THE BOARD OF FIRE AND POLICE COMMISSIONERS OF THE VILLAGE OF SCHAUMBURG'S RULES 20, 22, AND 38.

Ever since charges have been filed against Petitioner, he has consistently attempted to raise the issue of the constitutionality of various sections of the Rules and Regulations of the Board, paragraphs 20, 22 and 39. These Rules are set forth as Appendix B.

However, no court has attempted to resolve the issue raised by Petitioner. The Board refused to hear the issue and dispensed with it. The trial judge specifically stated in his order that he was not considering the constitutionality of the rule. The Appellate Court, other than quoting the trial judge's finding, made no ruling on the issues raised. This failure to deal with the serious issue, to wit: the constitutionality, both on their face and as applied, of these rules, denies Petitioner fundamental due process in that he has a right to be heard. See, e.g. *Goldberg v. Kelly*, 397 U.S. 254 (1970); *Railroad Commission of California v. Pacific Gas and Electric Co.*, 302 U.S. 388 (1938); see also, *Chaffin v. Stynchcombe*, 412 U.S. 17 (1973); *Matzner v. Davenport*, 288 F.Supp. 636, aff'd. 410 F.2d 1376 (2d Cir. 1968); *Baker v. City of Fairbanks*, 471 P. 2d 386 (Alaska, 1970). No court has, as yet, heard this issue, and their failure to consider or decide this most important issue, which has ramifications for many police departments throughout the nation, is a violation of the trust placed

in them. This Court as the Supreme Court of the United States, has the obligation to rule on questions of constitutional magnitude. The failure of the lower state courts to resolve this question leaves Petitioner with his sole recourse now in this Court. State courts should not readily abrogate to the federal courts their duty and responsibility to decide constitutional questions. The complete abrogation which has occurred here should not be allowed to go on and should not be condoned.

By failing to consider this issue, the state courts have merely encouraged further litigation rather than acting to definitively determine the issues raised. This inactivity creates a strain on the judicial system and denies Petitioner his right to be heard.

II.

PARAGRAPHS 20, 22 AND 38 OF THE RULES AND REGULATIONS OF THE VILLAGE OF SCHAUMBURG POLICE DEPARTMENT, WHICH LIMIT A POLICE OFFICER'S RIGHT TO CRITICIZE SUPERIORS, ARE UNCONSTITUTIONAL EITHER ON THEIR FACE OR AS APPLIED TO PETITIONER.

As stated in *DeGrazio v. Civil Service Commission*, 31 Ill. 2d 482, at 485:

> The rules of a police department are administrative regulations and have the force and effect of law (*Harrison v. Civil Service Co.*, 1 Ill. 2d 137). Therefore, they must be construed by the same standards governing the construction of statutes (2 Am. Jur. 2d, Administrative Law, Sec. 298 p. 125). A statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law. (*Baggett v. Bullitt*, 377 U.S. 360, 12 L.Ed. 2d 377, 84 S.Ct. 1316; *Hershey Mfg. Co. v. Adamowski*, 22 Ill. 2d 36).

It is apparent from a reading of Paragraphs 20, 22 and 38 of the Rules and Regulations of the Schaumburg Police Department that each is, on its face, vague and overbroad, in violation of the First and Fourteenth Amendments of the Constitution of the United States.

Although this challenge was not determined by the Board or the Courts, if the sections are unconstitutional, then Petitioner was significantly prejudiced in that most of the Board's hearing concerning the critical comments about Chief Conroy and served to bias the Board.

In *Muller v. Conlisk*, 429 F. 2d 901 (7th Cir. 1970), the Court ruled on the validity of the Chicago Police Department Rule 31, which, similar to Paragraphs 20, 22 and 38, prohibited "any activity, conversation, deliberation, or discussion which is derogatory to the Chicago Department . . ." 429 F. 2d at 903. The Court found:

> . . . it is clear beyond dispute that the rule is overbroad. In substance, it prohibits all criticism by policemen of the department. It may no longer be seriously asserted that policemen, have no right to criticize their employer.
>
> * * * *
>
> . . . it is clear that the First Amendment would reach and protect some speech by policemen which would be considered 'derogatory to the department'. Rule 31 on its face prohibits all such speech, *even private conversation*, and is for that reason unavoidably overbroad . . . (429 F.2d at 903-904). (emphasis supplied).

See also *Flynn v. Giarrusso*, 321 F. Supp. 1925 (E.D. La. 1971).

The regulations under scrutiny in the case at bar, like the regulations held invalid in *Muller* and *Giarrusso*, are too broad. They encompass without exception all

criticism and derogatory statements regardless of the context in which such statements are made (Paragraphs 20 and 22); and the dissemination of any "information" concerning the "affairs, business or operation of the Police Department" regardless of how innocuous the information might be, and without reference to any standard to determine if such information ought justifiably be classified as confidential (Paragraph 38). All three regulations are so broad and sweeping that they suffocate the First Amendment rights of the Petitioner, which rights he did not waive by chosing to become a policeman.*

Moreover, the operative language found in Paragraphs 20, 22 and 38 is impermissibly vague. Terms such as "critically or derogatorily" (Paragraph 20), "discuss or criticize" (Paragraph 22), and "information" (Paragraph 38) are the kind of terms which have traditionally been viewed by the Courts with disapproval unless their use is accompanied by clear definitions regarding what is meant thereby. See *Muller supra*, *Giarrusso, supra*. Such language leaves it to the policeman to guess what conduct will violate the prohibition encompassed by the regulations, and what conduct will not. When one must guess what conduct or utterance might lose him his position the prohibition cannot stand. *Keyishian v. Board of Regents*, 385 U.S. 589.

But even assuming, *arguendo*, that Paragraphs 20, 22 and 38 are not unconstitutional on their face, the record discloses that each was applied in the instant case in a fashion which unreasonably and unconstitutionally abridged Petitioner's First Amendment rights.

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* In *Kelley v. Johnson*, 44 U.S.L.W. 4469 (April 6, 1976), this Court recently discussed the rights of police officers to wear their hair in a certain manner. This Court did not, however, reach the question of the extent to which police departments can limit the free speech of their employees.

The Board found that Petitioner violated Paragraphs 20 and 22, by speaking critically and derogatorily of Chief Conroy and other members of the police department. The Board's finding was based on testimony concerning a series of conversations between Petitioner and other police officers. Those conversations were admittedly private in nature and took place while Petitioner was off duty. Also, the statements were made to a spy that Conroy had ordered to discover various types of information, were overheard by officers who were in hiding and had many indicia of acts of entrapment. Further, by Chief Conroy's own admission, what was said by Petitioner *did not impair the efficiency or discipline of the Police Department.* Petitioner respectfully submits that if Paragraphs 20 and 22 are to be construed in a fashion which does not violate First Amendment freedoms, then at the very least the prohibitions contained in those paragraphs must be interpreted as (1) applying only to public statements of police officers which are (2) likely to affect the discipline and efficiency of the Department. And under such an interpretation, the evidence heard by the Board would certainly not support a guilty finding.

The Board found that Petitioner violated Paragraph 38 in that he "voluntarily telephoned the attorney for . . . William Heidt and informed him that he had given a statement to the Police Chief relating to his knowledge of the Heidt matter . . . without the consent, knowledge or authorization [of] . . . the Commanding Officer or the Chief of Police." (A. 12 B p). To hold that Paragraph 38 encompasses this alleged activity is to give Paragraph 38 a construction which clearly goes well beyond legitimate boundaries. The Heidt case was pending in the Circuit Court of Cook County at the time the alleged statement by Petitioner was given and was, therefore, of

public record. The existence of a statement relative to a pending criminal case cannot rationally be interpreted as constituting a matter which is germane to the "affairs, business or operation of the Police Department". Rather, it is a matter which is relevant to the pending litigation and is discoverable by the defense under the Rules of The Supreme Court of Illinois. The Schaumburg Police Department would, accordingly, have no right to treat the statement as confidential or to withhold the fact of its existence. Moreover, the discovery of the statement might well have been mandated by *Brady v. Maryland*, 373 U.S. 83 (1963), and to attempt to hide the existence of such a statement would be a much more serious violation of a police officer's duty. Also, the contents of the statement were not disclosed. Hence, assuming Petitioner did tell the attorney for Officer Heidt that Petitioner had given a statement that act on the part of Petitioner cannot reasonably be held to fall within the prohibition of Paragraph 38.

Petitioner requests that this Court grant his Petition so as to clarify the standards which govern police officers in terms of their rights to criticize their superiors, to attempt to uncover wrongdoing on the part of those superiors and to fulfill various obligations under the Constitution of the United States. Moreover, this Court must resolve the differences created by the instant case and various lower federal court cases. Compare *Muller, supra.*

The events in this case took place prior to "Watergate" and before the "Post-Watergate" morality became bandied about. However, there is no difference in morality just because a certain point in time has been reached. Nothing that the Petitioner in this case did was wrong or required his dismissal. The utilization of rules such as those at issue here by the police department and the

Board constitute a serious infringement upon this police officer's rights, and every police officer who is subject to these or similar rules.

CONCLUSION

For these reasons, Petitioner Raymond T. Kwiek respectfully requests that a writ of certiorari issue to review the judgment and opinion of the Illinois Appellate Court, First District.

Respectfully submitted,

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APPENDIX A

ILLINOIS APPELLATE COURT
FIRST DISTRICT

No. 58640

RAYMOND T. KWIEK,

Plaintiff-Appellant,

v.

THE BOARD OF FIRE AND POLICE COMMISSIONERS OF THE VILLAGE OF SCHAUMBURG, MARTIN J. CONIGLIO, Chairman of the Board of Fire and Police Commissioners of the Village of Schaumburg, FRED W. VOLKENING, Member, Board of Fire and Police Commissioners of the Village of Schaumburg, DONALD I. PETERSON, Member, Board of Fire and Police Commissioners of the Village of Schaumburg and MARTIN J. CONROY, Chief of Police of the Village of Schaumburg.

Defendants-Appellees.

ORDER

This was a suit by which plaintiff-appellant Raymond T. Kwiek sought administrative review of the findings and decision of the Board of Fire and Police Commissioners of the Village of Schaumburg. Kwiek asked the trial court to reverse the Board's discharge of him as a policeman on the Schaumburg police force.

Pursuant to Ill. Rev. Stat. 1971, ch. 110, § 272 (a), plaintiff-appellant was required, on motion of defendants-appellees, to file a specification of the errors on which he relied for reversal. He did so and stated that his claimed errors were that the findings of the Board were not supported by the evidence or were not substantiated by the record. In the only specification that differed from the others, plaintiff-appellant

referred to the fact that his counsel had raised the constitutionality of a paragraph of the rules and regulations of the Schaumburg Police Department which he had been accused of violating.

The trial court, proceeding under the administrative review act, Ill. Rev. Stat. 1971, ch. 110, §§ 264, et seq., considered the pleadings, the record made before the Board, the memoranda of the parties, the arguments of counsel, and stating that it was not "* * * passing on the constitutionality of paragraph 22 of the rules and regulations * * *," found that there was sufficient evidence in the record to support the Board's findings and decision. The court ruled that the findings and decision were not against the manifest weight of the evidence and should be affirmed. It appears, therefore, that in this appeal the only issue before this court is whether the findings and decision of the Board of Fire and Police Commissioners of the Village of Schaumburg were against the manifest weight of the evidence.

This issue, in cases just like this one, has been resolved many times by reviewing courts of this state. In reviewing the findings and decision of an administrative agency like the Board in this case, the function of the trial court was limited to ascertaining if the findings and decision were against the manifest weight of the evidence (*Rizzo v. Board of Fire and Police Commissioners*, 131 Ill. App. 2d 229, 233, 267 N.E. 2d 7; *DeGrazio v. Civil Service Commission of Chicago*, 31 Ill. 2d 482, 202 N.E. 2d 522.) In such a case, it is for the administrative agency, not the courts, to determine the credibility of witnesses, resolve conflicts in the testimony, and determine the questions of fact. See *Davenport v. Board of Fire and Police Commissioners*, 2 Ill. App. 3d 864, 278 N.E. 2d 212. Our function in such a case like this one, is to determine whether the trial court ruled correctly when it concluded that the administrative record showed there was evidence that sufficiently supported the findings of the Board; and that the findings and decision were not against the manifest weight of the evidence. *Zinser v. Board of Fire and*

Police Commissioners, 28 Ill. App. 2d 435, 437, 172 N.E. 2d 33.

We have examined the record and conclude that the testimonial and physical evidence heard by the Board support its findings and decision. In our view, and that of the trial court, the findings and decision of the Board were not against the manifest weight of the evidence. An opinion in this case will have no precedential value. The question presented by plaintiff-appellant is not substantial. In the context of the facts before us, the question is not a fairly debatable one; it has been answered before. See *Crowell v. Daley, etc., et al.*, ... Ill. App. 3d .... N.E. 2d ..... (No. 60677); *Kelly v. Police Board of the City of Chicago*, 25 Ill. App. 3d 559, 323 N.E. 2d 624; *Coursey v. Board of Fire and Police Commissioners*, 90 Ill. App. 2d 31, 234 N.E. 2d 339; compare *Petraitis v. Board of Fire and Police Commissioners of the City of Palos Hills*, ... Ill. App. 3d ....., ... N.E. 2d ..... (No. 61089). These answers were expressed in extensive written opinions. A substantial question is one that is fairly debatable. Compare *Ortiz v. Greyhound Corporation* (D.C. Md. 1959), 192 F. Supp. 903, 905; *United States v. Stephenson* (D.C. Alaska 1953), 110 F. Supp. 623, 627. In our judgment, a question is not fairly debatable if it has been answered in written opinions of other reviewing courts of this state. Therefore, we dispose of this appeal on the authority of Supreme Court Rule 23, Ill. Rev. Stat. 1975, ch. 110A, par. 23 (amended effective July 1, 1975). The judgment is affirmed.

/s/ John J. Stamos, Justice

/s/ George N. Leighton, Justice

/s/ John C. Hayes, Justice

Dated: September 23, 1975

APPENDIX B

U.S. Const. Amend. 1:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S. Const. Amend. XIV:

SECTION I. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Village of Schaumburg Board of Fire and Police Commissioners' Rules:

Paragraph 20 provides:

INSUBORDINATION. Members and employees of the Police Department shall treat their superior officers with respect, and in their demeanor toward other associates in the department shall be courteous and considerate, guarding themselves against jealousy and other unfriendly feeling. It is their duty to inform their superior officers of any neglect or disobedience of orders that may come to their knowledge. Members and employees shall not, under any circumstances, or in any manner whatsoever, speak critically or derogatorily to any member of the department, or to any person outside the department regarding the orders or instructions issued by a superior officer; provided, however, in any case where there is a sound reason to believe that such orders or instructions are inconsistent or unjust it is the

right and duty of any member or employee to appeal to higher authority.

Paragraph 22 provides:

CRITICIZING. Members of the Department shall not discuss or criticize publicly or privately the personal habits, character or conduct, or the official action of other members of the Department unless it be a violation of the rules and regulations, in which case the same should be reported to their superior officers.

Paragraph 38 provides:

CONFIDENTIAL INFORMATION. No member of the Department shall give out or release any information covering the affairs, business or operation of the Police Department without the consent of the Commanding Officer. Members and employees of the Police Department shall not deliver addresses in meetings concerning the work of the Police Department, nor shall they make statements for publication concerning plans, policies or affairs of the Police Department unless authorized to do so by the Chief of Police.